



APPEAL
Integrated Planning Act 1997

File No. 3-05-047

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council
Site Address: *withheld* – “the subject site”
Applicant: *withheld*

Nature of Appeal

Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Caboolture Shire Council in application of its *Amenity and Aesthetics* Policy under Section 50 SBR, refusing an application for a Class 10 building on land described as Lot *withheld*, situated at “the subject site”.

Date and Place of Hearing: 9.30 am on Thursday 22 September, 2005
At “the subject site”.

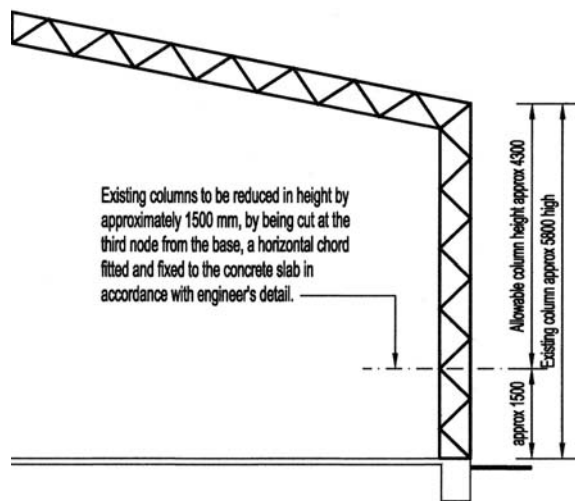
Tribunal:	Gregory Schonfelder Phil Locke Dennis Leadbetter	Aesthetic Referee Aesthetic Referee Aesthetic Referee (Chairman)
Present:	<i>Applicant</i> <i>Withheld</i> Chris Harris Melanie Millar	Owner Owner representative Caboolture Shire Council Caboolture Shire Council

Decision

The decision of the Caboolture Shire Council as contained in its letter dated 25 July, 2005, reference BRX-2005-524 (CH:pm), not to grant a relaxation to their *Amenity and Aesthetics Policy* to permit the erection of a Class 10 building (shed) on the land is **set aside**.

The applicant may erect a class 10a building on the site as follows:

- The building shall be of the nominal plan dimensions of 16 metres x 12 metres, and have a nominal column height to the north and south walls of approximately 4.3 metres above existing slab level. This height is based on the reduction in height of the column to the third node in the open web column – refer sketch.



- Walls and roof to the building are to be Colorbond finished. It was noted at the hearing that the use of a dark green colour was proposed. However the Tribunal is of the opinion that matching the colours with the Colorbond colours used on the residence would be more aesthetically acceptable, and, as the owner intends to air condition the building, a lighter colour would considerably reduce heat loads and therefore be more environmentally efficient.
- The Tribunal also considers some form of shade hoods to windows facing north, east and west would be advantageous, but are not a requirement of this decision.
- Structural certification is required for the design and construction of the building structure, including end wall framing, by a Registered Professional Engineer Queensland, for the reconfigured building.

This approval is also conditional on compliance with all normal Local Government approvals, including, but not limited to, building approval, plumbing approval, landscaping approvals, as appropriate.

Background

The application was for development approval to build a metal framed and metal clad shed (class 10a structure) on the site.

Council refused the application on the grounds that:

The building or structure, when built, will have an extreme (sic) adverse affect (sic) on the amenity or future amenity of the proposed building's neighbourhood

The owner has endured considerable hardship with the development. He is in possession of a contract document he had entered into with *withheld*, to construct both house and shed, the latter being by a specialist sub contractor, *withheld*, to *withheld*. The owner was under the belief that documents for both residence and shed had been submitted for all necessary approvals. This is supported by the documents submitted to the Tribunal, which included a site plan prepared by *withheld*, and includes the shed marked *SHED BY LINT*. This

drawing has also been submitted to the building certifier Phil Balmer and has been stamped *APPROVED* without any limitations or exclusions. Additional drawings provided by the owner after the hearing, including the landscape plan show the shed, again marked *SHED BY LINT*, and also stamped by the certifier, Phil Balmer, *APPROVED*.

In October 2002 work on the dwelling commenced. In early 2003, *withheld* went into liquidation and applicant has had considerable difficulty in obtaining information from the liquidators to allow him to continue and complete this project.

Material Considered

1. Appeal notice and grounds of appeal contained therein;
2. Drawings attached to that appeal notice;
3. Letter from the Caboolture Shire Council refusing the application;
4. Caboolture Shire Council's Policy no 202/02, Amenity and Aesthetics, dated 17 December 2002, adopted by resolution under Section 50 SBR;
5. Verbal submissions from the owner, explaining their reason for the proposed structure, specifically the height;
6. Verbal submissions from Mr Chris Harris, and Ms Melanie Millar, Caboolture Shire Council, detailing the reasons for the refusal;
7. The Standard Building Regulation 1993;
8. Additional information supplied by Caboolture Shire Council and applicant indicating material submitted for the original building approval.

Finding of Fact

The Tribunal made the following findings of fact:

- 1 The site is a large block, area approximately 8000 m², with a 60 metre frontage to *withheld* Drive.
- 2 The site has a slight fall from north to south, and the site has been cut to the north alignment and has small retaining walls to the south side of the residence and one proposed to the south of the shed.
- 3 The neighbouring area is comprised of large allotments with houses and outbuildings of similar nature to the proposed, but lower in height.
- 4 The land is zoned Rural Residential.

Reason for the Decision

Caboolture Shire Council's *Amenity and Aesthetics Policy* states, inter alia:

3.1 Implications

All applications for building work within Caboolture Shire falling in the categories listed below, whether lodged with the Caboolture Shire Council or with a Private Certifier, will require an application to be lodged for a decision by Caboolture Shire Council prior to any building work being determined by a Building Certifier.

a) **Category of Building Work:** (Requiring Amenity and Aesthetic Decision)

4. Any class 10 building which exceeds any of the following criteria:
Special Rural, Rural and Rural Residential Zoned Properties

- more than 1 storey in height
- having a wall height of more than 3.6 metres (measured along the pitching line)
- having a floor area exceeding 80m² on a parcel of land less than 2000m²

The policy, under section 4.2, allows the Local Authority to refuse an application,

- a) Where, in the opinion of the Council, the proposed building when built, will have an extremely adverse effect on the amenity or likely amenity of the buildings (sic) neighbourhood

The Tribunal is of the opinion that the proposed structure, as amended by this Tribunal decision:

- Is in keeping with the existing amenity of the surrounding properties, and with the intent of the *Amenity and Aesthetics Policy* of Caboolture Shire Council, as evidenced by other similar existing structures to properties surrounding.

Hence, in accordance with the provisions of Section 4.2.34 2(c) of the *Integrated Planning Act 1997*, the Tribunal determined to **set aside** the decision of the Caboolture Shire Council, contained in its letter dated 25 July, 2005, not to grant preliminary development approval to erect a class 10a building on the site.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip. Proj. Man QUT; METM UQ.

Building and Development

Tribunal Chairperson

Date: 27 October 2005

Appeal Rights

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
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